IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ABBOTT CARDIOVASCULAR SYSTEMS INC. and ABBOTT LABORATORIES INC., Plaintiffs, v. MEDTRONIC VASCULAR, INC and MEDTRONIC USA, INC., Defendants.	Civil Action No. 98-80 (SLR) (Consolidated with C.A. No 98-314 (SLR) and C.A. No. 98-316 (SLR))

REDACTED PUBLIC VERSION

JULY 9, 2007

DECLARATION OF DAVID C. PACITTI

I, David C. Pacitti, hereby declare as follows:

1. I am currently the Vice President of Global Marketing of Vascular Intervention for Abbott Cardiovascular Systems, Inc., formerly Advanced Cardiovascular Systems, Inc , which was a division of Guidant Corporation (collectively "ACS" herein). I have held this position since 2006. From 2004-2006, I was Director of Sales and Marketing Development of Cardiac Rhythm Management ("CRM") for Guidant From 2002-2004, I was the Southeast Area Sales Director of CRM for Guidant. From 2000-2002, I was Director of U.S. Marketing for the Vascular Intervention Division of Guidant ("Guidant VI") From 1999-2000, I was Group Product Manager of Stents for Guidant VI. From 1998-1999, I was Product Manager of Stents for Guidant VI. From 1995-1998, I was Account Manager for Guidant VI.

2. In October 1997, ACS launched its Multi-Link stent in the U.S. market. At that time, the Palmaz-Schatz stent, sold by Cordis Corporation (a subsidiary of Johnson & Johnson),

was the leading stent in the U S market. Before ACS's Multi-Link stent was launched in the United States, the Palmaz-Schatz stent had 67% of the U S. market. (Ex. 1 at 27.)

3. By December 1997, ACS's Multi-Link stent had gained 64% of the U.S. market and the Palmaz-Schatz stent had fallen to 23% of the U.S. market (*Id.*) Within two months of its U.S release, ACS's Multi-Link stent had become the leading stent in the U S. market.

4. In December 1997, Medtronic/AVE (collectively "Medtronic") launched its MicroStent II in the U.S. to compete with ACS's Multi-Link stent (*Id.*) By February 1998, Medtronic's MicroStent II had gained 27% of the U.S. market, while ACS's Multi-Link stent had fallen to 54%. (Ex 2 at 3.) It is clear from the data that ACS's loss of market share resulted, to a significant degree, from Medtronic's sales of its MicroStent II.

5. In April 1998, Medtronic launched its GFX stent and also continued to market its MicroStent II. (*Id.*) By July 1998, Medtronic had gained 45% of the U.S market, while ACS's market share had dropped to 39% of the U.S. market (*Id.*) With 45% of the U.S. market, Medtronic had become the leading stent manufacturer in the U.S. market. ACS's loss of market share during the first half of 1998, and in particular its loss of the market-leader position, resulted, to a significant degree, from Medtronic's sales of its MicroStent II and GFX stents during that time period While ACS quickly reclaimed its leadership position in the stent market with the release of its next Multilink stent (the "Duet") in November 1998, and held onto that position in the bare-metal stent market ever since, Medtronic has continued to hold a significant share of the market for bare-metal stents

6. Exhibit 3 is a chart showing ACS's and Medtronic's shares in the U.S. bare-metal stent market from September 1997 to the present As evident from this chart, any substantial

increase in Medtronic's market share generally corresponds to a decrease in ACS's market share, and vice versa.

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10. Additionally, ACS's loss of market share also damaged the goodwill of ACS's business in the eyes of investors. When valuing a medical device company, such as ACS, investors place substantial emphasis on the company's share in the market. By taking ACS's market share, Medtronic diminished the goodwill—and thus value—of ACS's business to current and potential investors.

11. To date, neither ACS nor Medtronic has released a DES product in the U.S. market, although both of them have launched DES products outside of the United States.

According to Medtronic's public statements, it is my understanding that Medtronic expects to receive approval to release its DES product in the U S market before the end of 2007.

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12. Currently, the DES segment of the U S stent market is split between Cordis's Cypher stent and Boston Scientific's Taxus stent. Despite their positive claims to reducing restenosis, the Cypher and Taxus stents have suffered some negative press due to the occurrence of late-stent thrombosis. Due to the perception of the marketplace, the next entrant into the DES segment of the U S. stent market will have an even greater opportunity to take market share away from both Cordis and Boston Scientific, and develop long-standing relationships with customers

13. If Medtronic releases its DES product into the U.S. market, Medtronic will undoubtedly take market share that ACS otherwise would have gained when it ultimately releases its own DES product.

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14. If Medtronic releases its DES product into the U.S. market before ACS receives approval to release its own DES product, ACS's future loss of market share to Medtronic would be even more significant. Specifically, if Medtronic gets a head start in the U.S. marketplace, it would be difficult for ACS to regain a significant portion of the market share taken by Medtronic, given that Medtronic would be the next entrant into the DES market and thus would have the first opportunity to take market share from Cordis and BSC and to cement long-standing relationships with customers.

15 On the other hand, if Medtronic does not release a DES product into the U S. market, ACS forecasts that its own DES product would gain a significant portion of the market

share that would otherwise be taken by Medtronic. Without question, therefore, Medtronic's release of its DES product into the U.S. stent market would cause damage to ACS's future ability to gain market share in the DES market.

16. Aside from losing market share, moreover, Medtronic's entrance into the DES segment of the U.S. stent market also would damage ACS in the same ways described above, namely **REDACTED** loss of goodwill of the business.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code. Executed on this the 29th day of June, 2007.

David C. Pacitti